

Immigration Violations

415.1 PURPOSE AND SCOPE

In accordance with the intent of the March 9, 2017 statement by the Santa Clara County Police Chiefs' Association, this Department recognizes that mutual trust and respect is the cornerstone in building a solid foundation for success in protecting and serving the entire community, and in seeking justice for all victims of crime.

Law-abiding, undocumented immigrants should not fear arrest or deportation for coming forward to members of the Department to report a crime as a victim or a witness. As such, it is incumbent upon all members of this department to make a personal commitment to organizational values, equal enforcement of the law and equal service to the public, regardless of immigration status.

415.2 POLICY

The responsibility for enforcement of civil immigration laws rests with the U.S. Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO).

The Department will continue to cooperate with ICE in matters involving serious crimes, the protection of public safety, and as required by statute, federal regulation, or court decisions, other than the isolated immigration violations enumerated in Title 8 USC § 1304; 8 USC § 1324; 8 USC § 1325 and 8 USC § 1326.

415.3 DEFINITIONS

Administrative Warrants - Administrative warrants, also called hold requests or detainers, are issued by a government agency, typically by Immigration and Custom Enforcement officials' findings that a person is removable from the United States.

Alien - An individual who is not a U.S. citizen or U.S. national.

Illegal Alien - Also known as an "Undocumented Alien," or "Undocumented Immigrant," is an alien who has entered the United States illegally and is deportable if apprehended, or an alien who entered the United States legally but who has fallen "out of status" and is deportable.

Immigrant - An alien who has been granted the right to reside permanently in the United States and to work without restrictions in the United States. Also known as a Lawful Permanent Resident, all immigrants are eventually issued a "green card."

Judicial Warrants – Judicial warrants are criminal warrants issued by a judicial officer, typically a magistrate judge.

Nonimmigrant - An alien who has been granted the right to reside temporarily in the United States based on a status that corresponds to the class of visa. Each nonimmigrant status has rules that must be followed in order for the nonimmigrant to remain "in status." A nonimmigrant who violates applicable rules will fall "out of status" and is considered deportable.

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U.S. National - An individual who owes his/her sole allegiance to the United States, including all U.S. citizens, and including some individuals who are not U.S. citizens.

415.4 BASIS FOR CONTACT

This Department is concerned for the safety of local citizens and thus detection of criminal behavior is of primary interest in dealing with any person. The decision to detain or arrest shall be based upon those factors which establish reasonable suspicion and probable cause respectively, and not on arbitrary aspects. Race, nationality, ethnicity, country of origin, inability to speak English, “foreign” appearance, dress, mannerisms, gender, sexual orientation, religion, and socioeconomic status alone are of no bearing on the decision to contact, detain, or arrest.

Officers will not detain or question a person for the purpose of discovering either the person’s citizenship or status under civil immigration laws.

Officers will not detain or arrest any person on the basis of the person’s citizenship or status under civil immigration laws.

Members of the Department will not initiate police action where the primary objective is to discover that the person is an undocumented immigrant or to discover the status of the person under civil immigration laws.

415.5 ASSISTING ICE

The Department does not conduct sweeps or other concentrated efforts to detain suspected undocumented aliens.

If a specific request is made by ICE or any other federal agency, this department may provide available support services, such as traffic control or peacekeeping efforts, during the federal operation.

Members of this department shall not participate in such federal operations as part of any detention team unless it is in direct response to a request for assistance on a temporary basis or for officer safety. Any detention by a member of this department should be based upon the reasonable belief that an individual is involved in criminal activity, or where there is a valid judicial warrant.

ICE personnel shall not be allowed access to individuals detained or held at the Department, unless their access is required in the course of a criminal investigation, pursuant to a judicial warrant, or while providing services unrelated to the enforcement of civil immigration law.

415.5.1 NOTIFICATION OF IMMIGRATION AND CUSTOMS ENFORCEMENT

Generally, members of this department should not ask the immigration status of individuals taken into custody. The United States Department of State Consular Notification policy requires law enforcement to notify certain consular offices when a Foreign National is in custody. (Refer to U.S. Department of State website for complete details. <https://travel.state.gov/content/travel/en/consularnotification.html>). In these instances, the officer shall gather information to determine if consular notification applies. In compliance with state law, whenever an officer has reason to

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believe that any person arrested for any offense listed in Health & Safety Code §11369 or any other felony may not be a citizen of the United States and the individual is not going to be booked into county jail, the arresting officer shall cause ICE to be notified for consideration of an immigration hold. Generally, ICE notification of booked arrestees will be handled according to jail operations procedures.

415.5.2 CONSIDERATIONS PRIOR TO REPORTING TO ICE

All individuals, regardless of their immigration status, must feel secure that contacting law enforcement will not make them vulnerable to deportation. Members should not attempt to determine the immigration status of crime victims and witnesses or take enforcement action against them absent exigent circumstances or reasonable cause to believe that a crime victim or witness is involved in violating criminal laws. In making the determination whether to notify ICE in such circumstances, the officer, in consultation with a supervisor and approval from a command staff member, shall consider the seriousness of the offense and the potential impact to community safety.

Nothing in this policy is intended to restrict officers from exchanging legitimate law enforcement information with any other federal, state or local government entity (8 USC § 1373; 8 USC § 1644).

415.6 NOTICE TO INDIVIDUALS

Individuals shall be given a copy of documentation received from Immigration and Customs Enforcement (ICE) regarding a hold, notification or transfer request along with information as to whether the City of Sunnyvale Department of Public Safety intends to comply with the request (Government Code § 7283.1).

If the City of Sunnyvale Department of Public Safety provides ICE with notification that an individual is being, or will be, released on a certain date, the same notification shall be provided in writing to the individual and to his/her attorney or to one additional person who the individual may designate (Government Code § 7283.1).

415.7 U VISA AND T VISA NONIMMIGRANT STATUS

Under certain circumstances, federal law allows temporary immigration benefits, known as a U visa, to victims and witnesses of certain qualifying crimes (8 USC § 1101(a)(15)(U)).

Similar immigration protection, known as a T visa, is available for certain qualifying victims of human trafficking (8 USC § 1101(a)(15)(T)).

Any request for assistance in applying for U visa or T visa status should be forwarded in a timely manner to the Investigations Unit supervisor assigned to oversee the handling of any related case. The Investigations Unit supervisor should:

- (a) Consult with the assigned investigator to determine the current status of any related case and whether further documentation is warranted.

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- (b) Contact the appropriate prosecutor assigned to the case, if applicable, to ensure the certification or declaration has not already been completed and whether a certification or declaration is warranted.
- (c) Address the request and complete the certification or declaration, if appropriate, in a timely manner.
 - 1. The instructions for completing certification and declaration forms can be found on the U.S. Department of Homeland Security (DHS) website.
 - 2. Form I-918 Supplement B certification shall be completed if the victim qualifies under Penal Code § 679.10 (multiple serious offenses). Form I-914 Supplement B certification shall be completed if the victim qualifies under Penal Code § 236.5 or Penal Code § 679.11 (human trafficking).
- (d) Ensure that any decision to complete, or not complete, a certification or declaration form is documented in the case file and forwarded to the appropriate prosecutor. Include a copy of any completed form in the case file.
- (e) Inform the victim liaison of any requests and their status.

415.7.1 TIME FRAMES FOR COMPLETION

Officers and their supervisors who are assigned to investigate a case of human trafficking as defined by Penal Code § 236.1 shall complete the above process and the documents needed for indicating the individual is a victim for the T visa application within 15 business days of the first encounter with the victim, regardless of whether it is requested by the victim (Penal Code § 236.5).

Officers and their supervisors shall complete the above process and the documents needed certifying victim cooperation for a U visa or T visa application pursuant to Penal Code § 679.10 and Penal Code § 679.11 within 90 days of a request from the victim or victim's family related to one of their assigned cases. If the victim is in removal proceedings, the certification shall be processed within 14 days of the request.

415.7.2 REPORTING TO LEGISLATURE

The Investigations Unit supervisor or the authorized designee should ensure that certification requests are reported to the Legislature in January of each year and include the number of certifications signed and the number denied. The report shall comply with Government Code § 9795 (Penal Code § 679.10; Penal Code § 679.11).

415.8 TRAINING

The Training Lieutenant should ensure that all appropriate members receive training on immigration issues.

Training should include:

- (a) Identifying civil versus criminal immigration violations.
- (b) Factors that may be considered in determining whether a criminal immigration violation has been committed.
- (c) Prohibitions contained in the California Values Act (Government Code § 7284 et seq.).

City of Sunnyvale Department of Public Safety

Department Policies

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